CALIFORNIA LANDLORDS' DUTY TO PROTECT TENANTS FROM CRIMINALS

This Comment examines the status of a California landlord's duty to provide security measures for his tenant. Recent appellate cases have required prior criminal acts on the premises as a prerequisite to holding a landlord liable in tort for criminal acts. This Comment suggests that the focus should be on whether the landlord has been reasonable in providing protective measures. In addition, minimum safety requirements should be legislatively enacted.

INTRODUCTION

A few jurisdictions now depart from traditional doctrines of landlord tort immunity from tenant suits for third-party criminal acts on the premises.[1] California has not yet determined what protective measures, if any, a landlord must provide his tenant to guard against such acts.

An analysis of the current status of a California landlord's duty to provide security measures requires an examination of two overlapping duty principles: (1) the landlord's duty to use reasonable care in the management of his property; and (2) an individual's duty to protect against third-party criminal acts. The developments in both of these areas will be examined.

This Comment concludes that California landlords should have a duty to provide reasonable security measures for their tenants. The scope of this duty will be determined by the elements of foreseeability and reasonableness. This Comment suggests that recent appellate cases that require prior criminal acts on the premises to fulfill the foreseeability requirement have misplaced the emphasis. The focus should be on whether the actions of the landlord have been reasonable.

1. *E.g.*, Kline v. 1500 Massachusetts Ave. Apartment Corp., 439 F.2d 477 (D.C. Cir. 1970); Samson v. Saginaw Prof. Bldg., Inc., 393 Mich. 393, 224 N.W.2d 843 (1975); Trentacost v. Brussel, 82 N.J. 214, 412 A.2d 436 (1980).

LANDLORD'S DUTY TO USE REASONABLE CARE

Landlord's Duty at Common Law

Because negligence is a breach of a duty of care, liability for negligence can never be found unless the alleged wrongdoer owes a duty of care to the person injured.[2] At common law, landlords owed no duty of care to tenants;[3] they were therefore immune from tort liability for injuries sustained by tenants on the premises.[4] This immunity dated back to an earlier agrarian society when responsibility for the premises was governed by the doctrine of caveat emptor.[5] Because most leases were for agricultural land, the primary purpose of the lease was for the land itself; the presence or condition of any structures was merely incidental to the agreement. A lease was conceptualized purely as a conveyance of an interest in land.[6] After he conveyed to a tenant, a landlord lost all rights to possession and control of the leasehold estate.[7] It would have been senseless to hold the landlord liable for conditions on land which was no longer his to manage.

Although landlord's immunity from tort liability was the general rule, it has never been absolute. Through the years, the courts carved out several exceptions.[8] Until 1968, California courts consistently denied recovery to tenants for injuries sustained on the premises unless one of the exceptions applied.

Landlord's Duty After Rowland v. Christian

In *Rowland v. Christian*,[9] the California Supreme Court acknowledged that the historical justifications for the traditional

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2. Routh v. Quinn, 20 Cal. 2d 488, 127 P.2d 1 (1942); RESTATEMENT (SECOND) OF TORTS § 281 (1965).

3. *See, e.g.*, Farber v. Greenberg, 98 Cal. App. 675, 680-81 (1929).

4. 1 CASNER, AMERICAN LAW OF PROPERTY § 3.45 (1952).

5. The rules regarding the occupation of land were the result of the "high place which land has traditionally held in English and American thought . . . . This sanction of land ownership included notions of its economic importance and the social desirability of the free use and exploitation of land." HARPER & JAMES, THE LAW OF TORTS 1432 (1956).

6. 1 CASNER, *supra* note 4, § 3.11.

7. R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD-TENANT § 4.1 (1980).

8. *E.g.*, Burks v. Blackman, 52 Cal. 2d 715, 344 P.2d 301 (1959) (part of the premises used in common by the tenants); McNally v. Ward, 192 Cal. App. 2d 871, 14 Cal. Rptr. 260 (1961) (statutory duty to repair); Rau v. Redwood City Woman's Club, 111 Cal. App. 2d 546, 245 P.2d 12 (1952) (premises leased for admission to the public); Janofsky v. Garland, 42 Cal. App. 2d 655, 109 P.2d 750 (1941) (landlord's negligent repairs); Scholey v. Steele, 59 Cal. App. 2d 402, 138 P.2d 733 (1943) (landlord's express covenant to repair); Hassell v. Denning, 84 Cal. App. 479, 258 P. 426 (1927) (landlord aware of concealed dangerous condition).

9. 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968) (court rejected the common law classifications of trespasser, invitee, or licensee as determinative of the care owed).

rules governing the tort liability of land owners and occupiers no longer exist. The court said that the fundamental principle of due care enunciated in California Civil Code Section 1714 should be applied to determine the degree of care owed by one in the management of his property.[10] California Civil Code Section 1714 states:

> Everyone is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of his ordinary care, brought the injury upon himself.[11]

The court said that this principle should be applied unless there is a statutory exception or some other reason clearly supported by public policy.[12] However, *Rowland* involved not a landlord's duty to a tenant, but a tenant's duty of care towards a non-tenant on the property. The tenant was in possession of the property. Will the same policy of due care in the management of property apply to a landowner not in possession? Although the Supreme Court has not answered this precise question, the court of appeal in *Brennan v. Cockrell Investments, Inc.*[13] stated that the same duty of reasonable care would apply in landlord-tenant situations.[14] In *Brennan*, a tenant sued his landlord for injuries suffered in a fall from a stairway when a handrail broke. The appellate court reversed the trial court for failure to instruct on the general rule for negligence liability set forth in California Civil Code Section 1714.[15]

The *Brennan* court said that a landowner's not being in possession does not in itself relieve him of liability if he fails to use reasonable care in the management of his property.[16] Lack of possession no longer means lack of control[17] as it did in an earlier agrarian society. A modern landlord may still exercise considerable, if not exclusive, control over the management of his property

10. *Id.* at 119, 443 P.2d at 568, 70 Cal. Rptr. at 104.
11. CAL. CIV. CODE § 1714 (West 1954 & Supp. 1982).
12. Rowland v. Christian, 69 Cal. 2d at 112, 443 P.2d at 564, 70 Cal. Rptr. at 100; *see also* English v. Marin Mun. Water Dist., 66 Cal. App. 3d 725, 136 Cal. Rptr. 224 (1977) (court stated that Cal. Civ. Code § 846, which says a landowner has no duty to keep premises safe for named recreational activity, is an exception not in conflict with *Rowland*).
13. 35 Cal. App. 3d 796, 111 Cal. Rptr. 122 (1973).
14. *Id.* at 801, 111 Cal. Rptr. at 125.
15. *Id.* at 802, 111 Cal. Rptr. at 126.
16. *Id.* at 801, 111 Cal. Rptr. at 126.
17. *Id.*

despite his not being in possession. The degree of control may be a significant factor to be weighed in determining whether a landlord has failed to meet a standard of care, but lack of possession itself should not create a barrier to liability.[18]

It is difficult to conceive of any legitimate public interest to be served by creating an exception to the section 1714 duty standard based solely on the landlord's lack of possession.[19] A single standard of reasonable care should be imposed on land occupiers and land owners alike, with possession being relevant only to the issues of foreseeability and unreasonableness of the harm[20] (factors which can mitigate against liability but which do not change the basic standard to be applied).

Landlord tort immunity has been severely eroded if not completely abrogated. However, does the duty of a landlord to use reasonable care in the management of his property include a duty to protect against criminal acts on the premises?

Duty to Protect Against Criminal Acts

The key inquiry for a landlord's duty under the *Rowland* court's interpretation of California Civil Code Section 1714 is "whether in the management of his property he has acted as a reasonable man in view of the probability of injury to others. . . ."[21] The court believed any deviation from this test should be strongly supported by public policy. The court listed a number of factors to be balanced before granting any exceptions:

> [T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.[22]

These factors must be balanced to determine whether a standard of reasonable care in the management of property imposes a duty on the landlord to take reasonable measures to provide for the tenant's security. (1) Because crime is prevalent in today's society,[23] it is foreseeable that a criminal act will occur if one fails to take any precautions against criminal intrusion. (2) In a typi-

18. *Id.* at 801, 111 Cal. Rptr. at 125.
19. *Id.* at 800, 111 Cal. Rptr. at 125.
20. *Id.* at 801, 111 Cal. Rptr. at 125.
21. 69 Cal. 2d at 119, 443 P.2d at 568, 70 Cal. Rptr. at 104.
22. *Id.* at 113, 443 P.2d at 564, 70 Cal. Rptr. at 100.
23. There is a crime problem in California, with burglary continuing to be the most serious in terms of frequency and dollar loss. OFFICE OF CRIMINAL JUSTICE PLANNING, CALIFORNIA COMMUNITY CRIME RESISTANCE PROGRAM, FIRST ANNUAL REPORT TO THE LEGISLATURE 1 (Jan. 1982).

cal situation, it will be relatively easy to determine if a plaintiff was injured as a result of a criminal act because a criminal intrusion generally involves damage/theft to property, or personal injury. (3) Moral blame should attach to a landlord's conduct if he fails to take reasonable security precautions to protect his tenants. The degree of moral blame may vary with the particular situation. (4) The policy of preventing future harm is of vital importance on the issue of whether a landlord should have a duty to provide security measures. The risk of crime is reduced when a dwelling is made less vulnerable.[24] Prevention of injury is an important goal of tort law,[25] in addition to compensation. (5) The imposition of a duty on the landlord to provide protection for tenants would be beneficial to the community. Not only would some crime be prevented but, in addition, tenants' fear of crime would be reduced.[26] (6) Land owners generally can and do insure their property to guard against liability.[27]

An analysis of these factors leads to the conclusion that there should be no deviation from the requirement of reasonable care in the management of property when considering the duty of a landlord to provide security measures.

Policy Justifications

A number of other policy reasons justify a landlord's duty to provide reasonable protection for the tenant. The landlord is in the superior economic position to install security devices. The cost of the installation can be spread over all tenants.[28] The lim-

24. "The crime risk to a residence may be reduced by measures that decrease its vulnerability or measures that reduce the crime pressure in the area." U.S. DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, RESIDENTIAL SECURITY 7 (1973) [hereinafter cited as RESIDENTIAL SECURITY].

25. "When the decisions of the courts become known, and defendants realize that they may be held liable, there is of course a strong incentive to prevent the occurrence of the harm." W. PROSSER, THE LAW OF TORTS 23 (4th ed. 1971).

26. There is much public anxiety about crime. RESIDENTIAL SECURITY, *supra* note 24, at 14.

27. General liability property insurance will generally cover any liability resulting from the business venture. Telephone interview with Ron Ortega, Property Supervisor, Hartford Insurance (Dec. 29, 1982).

28. "Nor in this highly mobile society should tenants be required to invest substantial sums in improvements that might outlast their tenancy. The landlord, however, can spread the cost of maintenance over an extended period of time among all residents enjoying its benefits." Trentacost v. Brussel, 82 N.J. 214, 220, 412 A.2d 436, 442 (1980).

ited stay of a mobile tenant may not justify the expenditure by that tenant to provide the needed protection.

The landlord, particularly in a multi-unit apartment, has greater control over the property. In addition, securing the premises requires installation of equipment in common areas of the building that are controlled by the landlord.

The housing shortage has left the tenant with little bargaining power to obtain the desired level of protection in housing.[29] The modern tenant is essentially in the same position in regard to housing as he is in the purchase of other consumer goods.[30] He should be able to rely on his reasonable expectations that the premises he is renting are suitable as a living unit.[31] Suitability should include protection from criminals.

DUTY TO PROTECT AGAINST THE CONDUCT OF ANOTHER

Duty at Common Law

Even with the erosion of common law landlord tort immunities and the imposition of a landlord's duty to use reasonable care in the management of his property, there is another duty principle that has traditionally relieved landlords of liability for injuries sustained by a tenant as a result of a criminal act. At common law, an individual generally had no duty to control the negligent or criminal act of a third person.[32] The act of the intervening third person was ordinarily regarded as a superseding cause relieving the initial actor of any liability. Exceptions to this general rule of non-liability were recognized only if the defendant stood in some special relationship to the victim or to the dangerous third person.[33] Examples of traditionally recognized special relationships include carrier-passenger,[34] innkeeper-guest,[35] and cus-

29. *See generally* BROWN, ROOS, & COSTA, CURING CALIFORNIA'S HOUSING ILLS—A DEMOCRATIC PRESCRIPTION, ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT 2 (March 24, 1982) (supply of housing is not keeping up with demand).

30. Green v. Superior Court, 10 Cal. 3d 616, 627, 517 P.2d 1168, 1175, 111 Cal. Rptr. 704, 711 (1974).

31. "A tenant may reasonably expect that the product he is purchasing is fit for the purpose for which it is obtained, that is, a living unit." *Id.* at 625, 517 P.2d at 1175, 111 Cal. Rptr. at 711.

32. Tarasoff v. Regents of Univ. of Calif., 17 Cal. 3d 425, 435, 551 P.2d 334, 343, 131 Cal. Rptr. 14, 23 (1976); Richards v. Stanley, 43 Cal. 2d 60, 65, 271 P.2d 23, 27 (1954).

33. Tarasoff v. Regents of Univ. of Calif., 17 Cal. 3d at 435, 551 P.2d at 343, 131 Cal. Rptr. at 23.

34. *See, e.g.*, Schwerin v. H.C. Capwell Co., 140 Cal. App. 1, 34 P.2d 1050 (1934).

35. *See, e.g.*, Kingen v. Weyant, 148 Cal. App. 2d 656, 307 P.2d 369 (1957).

todian-ward.[36] The foundation of a special relationship was that the passenger, guest, or ward had placed himself under the control of the other party and, therefore, was entitled to protection.[37]

The landlord-tenant relationship traditionally has not been seen as a "special" one that would impose a duty of protection. In fact, quite the opposite view developed in landlord-tenant law.[38] The law did not view a tenant as having submitted himself to the landlord's control. In the earlier agrarian society, possession and control of the land were handed over to the lessee, ending most, if not all, of the landlord's control of the property and of the tenant for the term of the lease.[39] Because control was essential to finding a special relationship, the landlord-tenant arrangement was traditionally seen as outside such a relationship.

Landlord-Tenant As a Special Relationship

The realities of modern urban life have prompted some courts to redefine landlords' duties. This new conceptualization has included viewing the landlord-tenant relationship as a "special" one that justifies imposing a duty on the landlord to provide some protection against criminal acts.[40]

Some cases reach this result by analogizing the landlord-tenant relationship to the innkeeper-guest relationship.[41] The modern-day landlord is viewed as having a similar degree of control over the leased building as the innkeeper has over the hotel. Tenants, particularly those in large apartment complexes, give virtually complete control over their protection to the landlord. The tenant generally cannot hire a private police force nor install major security devices. Along with the landlord's control comes the concomitant duty to take reasonable precautions to protect against anticipated attacks by third parties.

Other cases have added the landlord-tenant relationship to the special relationship category without making the innkeeper-guest

36. *See, e.g.*, Wallace v. Der-Ohanian, 199 Cal. App. 2d 141, 18 Cal. Rptr. 892 (1962).

37. *See supra* notes 33-35.

38. *See supra* text accompanying notes 3-5.

39. *See supra* note 6.

40. *See* cases cited *supra* note 1.

41. *See, e.g.*, Kline v. 1500 Massachusetts Ave. Apartment Corp., 439 F.2d 477, 482 (D.C. Cir. 1970).

analogy.[42] The landlord not only has more control than the tenant, he also has the greater incentive and capacity to maintain the premises and provide the needed security because he is in the superior financial position.[43] Some California appellate court cases have designated the landlord-tenant relationship as a special one. However, the cases have failed to provide the analytical basis for this determination and they have failed to clearly define the landlord's duty. In *O'Hara v. Western Seven Trees Corp.*,[44] the court stated that "the landlord-tenant relationship, at least in the urban, residential context, has given rise to liability under circumstances where landlords have failed to take reasonable steps to protect tenants from criminal activity."[45] In dicta the court in *Totten v. More Oakland Residential Housing, Inc.*[46] concluded that a special relationship exists between tenants and landlords, which gives rise to a duty to protect against the criminal acts of third persons.[47] In *Kwaitkowski v. Superior Trading Co.*,[48] the court found that a special relationship existed between the landlord and tenant and imposed liability on the landlord for the tenant's injuries that resulted from the landlord's failure to repair a defective door lock.[49]

Weirum *and* Tarasoff *Duty Analyses*

Although these cases fail to provide the rationale for imposing liability on the landlord for the criminal acts of third persons, the conclusion can be justified by applying the reasoning of the California Supreme Court in its duty analyses in *Weirum v. RKO General, Inc.*[50] and in *Tarasoff v. Regents of University of California*.[51] In *Weirum*, the court said that "foreseeability of the risk is a primary consideration in establishing the element of

42. *See, e.g.*, Trentacost v. Brussel, 82 N.J. 214, 412 A.2d 436 (1980).

43. "The logic of the situation itself" demands that a landlord have an affirmative duty to use reasonable care to protect the tenant. Kline v. 1500 Massachusetts Ave. Apartment Corp., 439 F.2d 477, 483 (D.C. Cir. 1970).

44. 75 Cal. App. 3d 798, 142 Cal. Rptr. 487 (1977). The complaint alleged that the owners of an apartment complex were negligent in failing to provide adequate security. A second cause of action was based on the owners' misrepresentation of the security measures in effect on the premises.

45. *Id.* at 802, 142 Cal. Rptr. at 489.

46. 63 Cal. App. 3d 538, 134 Cal. Rptr. 29 (1976). The trial court's decision to sustain the landlord's demurrer was upheld. A licensee was injured in the laundry room of an apartment building during a gunfight between two men who were strangers to the landowner. The court of appeal held that a landowner is not required to take precautions to protect a mere licensee against a sudden attack which the landlord has no reason to anticipate. *Id.* at 543, 134 Cal. Rptr. at 33.

47. *Id.* at 546, 134 Cal. Rptr. at 35.

48. 123 Cal. App. 3d 324, 176 Cal. Rptr. 494 (1981).

49. *Id.* at 333, 176 Cal. Rptr. at 500.

50. 15 Cal. 3d 40, 539 P.2d 36, 123 Cal. Rptr. 468 (1975).

51. 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976).

duty."[52] In *Weirum*, a disc jockey conducted a radio contest offering a reward to the first contestant to find him as he traveled around Los Angeles. Two young listeners were involved in a high-speed chase which forced a third car off the highway, killing its driver. The survivors brought a wrongful death suit against the radio station. The trial court found the station liable and the California Supreme Court affirmed, stating that an actor is not shielded from liability for harm caused by a third party "if the likelihood that a third party may react in a particular manner is a hazard which makes the actor negligent."[53] The court declared that liability would be imposed, however, "only if the risk of harm resulting from the act is deemed unreasonable—i.e., if the gravity and likelihood of the danger outweigh the utility of the conduct involved."[54]

Weirum might be distinguished from the landlord-tenant cases because it involved an affirmative act by the disc jockey that created the hazard. A landlord, on the other hand, might fail to act at all, providing no security measures—nonfeasance as opposed to the misfeasance in *Weirum*.[55] However, renting out an apartment might be considered an affirmative act and the lack of security creates the hazard. Furthermore, the *Weirum* court declared that *foreseeability of the risk* is to be the main element in determining the duty.[56]

The imposition of a duty on a landlord to take steps to protect his tenants is further justified by the court's decision in *Tarasoff v. Regents of University of California*. The *Tarasoff* court said that the defendant psychiatrist had a duty to take reasonable steps to protect the victim from his violent patient. In that case, there was a special relationship between the doctor and the patient, creating the affirmative duty on the part of the doctor to use reasonable care to avoid foreseeable harm to the victim. The *Tarasoff* court reiterated the contention of *Weirum* that foreseeability of the risk is the primary consideration in determining the duty.[57]

52. 15 Cal. 3d at 46, 539 P.2d at 39, 123 Cal. Rptr. at 471 (citations omitted).
53. *Id.* at 47, 539 P.2d at 40, 123 Cal. Rptr. at 472 (citations omitted).
54. *Id.*
55. The common law distinguished between misfeasance and nonfeasance, and was reluctant to impose liability for nonfeasance. *See* Harper and Kime, *The Duty to Control the Conduct of Another*, 43 YALE L.J. 886, 887 (1934).
56. 15 Cal. 3d at 46, 539 P.2d at 30, 123 Cal. Rptr. at 471.
57. 17 Cal. 3d at 434, 551 P.2d at 343, 131 Cal. Rptr. at 23. *Tarasoff* involved the

The duty analyses of *Weirum* and *Tarasoff* could easily be applied to landlord-tenant cases. Renting out an apartment without security protections could be viewed as an act creating a hazard and, thus, imposing liability for foreseeable risks as in *Weirum*. Alternatively, if the landlord-tenant relationship is viewed as a special relationship, the application of the duty principle in *Tarasoff* imposes a duty on the landlord to take reasonable precautions to protect the tenant against foreseeable harm. In either analysis, the foreseeability of the harm would be the major consideration in determining the duty of care owed.

LANDLORD'S DUTY TO PROVIDE SECURITY MEASURES

A landlord's duty to provide security measures for the tenant can be justified by the application of overlapping duty principles: 1. the duty to use reasonable care in the management of property (as enunciated in *Rowland*); and 2. the duty to protect against foreseeable negligent or criminal acts because a) the landlord created the hazard (*Weirum* analysis),[58] or b) a special relationship exists between landlord and tenant (*Tarasoff* analysis). The combination of these duty principles applied to the landlord-tenant situation imposes a duty on the landlord to use reasonable measures to protect the tenant from foreseeable criminal intrusions and the corresponding liability if he fails in his duty.

The imposition of such a duty does not make a landlord liable every time there is a criminal act resulting in injury to someone on the premises.[59] He will be liable only when the injuries result from his failure to take reasonable precautionary measures under the circumstances. Therefore, not only would the criminal act of the third party need to be foreseeable but, in addition, the landlord would have to be unreasonable in his actions.

Foreseeability

Foreseeability has been the critical issue in the recent California appellate cases that have relieved the landlord of liability for the criminal act of a third party. However, the courts equated

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imposition of a duty on the psyhchiatrist to protect a third party from the individual (the patient) involved in the special relationship with the doctor. In the landlord-tenant situation, on the other hand, the landlord would have a duty to act to protect the person directly involved in the special relationship—i.e., the tenant. Therefore, the imposition of such a duty on a landlord has an even stronger justification than the duty imposed in *Tarasoff*.

58. *See* Comment, *The Death of Palsgraf: A Comment on the Current Status of the Duty Concept in California*, 16 SAN DIEGO L. REV. 793 (1979).

59. Of course, a tenant will still have to prove the actual cause—that the negligence of the landlord (failure to take reasonable precautions) caused the injuries.

"foreseeability" with the presence or absence of similar criminal acts on the same premises in the past. In *7735 Hollywood Blvd. Venture v. Superior Court*,[60] the tenant had been raped in her apartment by an intruder. The court sustained the landlord's demurrer to the tenant's complaint for personal injuries because the complaint, among other things, failed to allege any previous similar crime on the premises.[61] Similarly, in *Riley v. Marcus*,[62] a tenant sued for damages for rape, alleging that inadequate lighting and door locks had enabled the criminal to gain entrance. The court affirmed a summary judgment on the ground that, absent a history of similar acts of violence on the leased premises, the landlord could not foresee the intrusion and did not owe the tenant a duty to provide protection against the assault.[63]

Cases that have imposed liability on the landlord have also focused on the issue of prior violence on the premises. In *O'Hara v. Western Seven Trees Corp.*,[64] the court imposed liability in part because several other tenants had previously been raped.[65] In *Kwaitkowski v. Superior Trading Company*,[66] the court said that the landlord had a duty to provide security for the tenant who was assaulted and robbed, emphasizing that another tenant had been assaulted two months previously.[67]

This emphasis on prior criminal acts is misplaced. The potential of criminal intrusion is everywhere.[68] The courts should not make an assault on the first victim a prerequisite for the second to get into court. Foreseeability does not require that a particular event has happened before.[69] If the likelihood of an intervening

60. 116 Cal. App. 3d 901, 172 Cal. Rptr. 528 (1981). An apartment house owner petitioned the court of appeal for a writ of mandate following the trial court's overruling of the owner's demurrer to a tenant's complaint seeking damages for injuries suffered because of a forcible rape committed on the premises. The appellate court directed the trial court to enter an order sustaining the demurrer, holding that the complaint failed to plead sufficient facts to create a duty on the owner.

61. *Id.* at 903, 172 Cal. Rptr. at 529.

62. 125 Cal. App. 3d 103, 177 Cal. Rptr. 827 (1981).

63. *Id.* at 109, 177 Cal. Rptr. at 833.

64. 75 Cal. App. 3d 798, 142 Cal. Rptr. 487 (1977).

65. *Id.* at 803, 142 Cal. Rptr. at 490.

66. 123 Cal. App. 3d 324, 176 Cal. Rptr. 494 (1981).

67. *Id.* at 333, 176 Cal. Rptr. at 500.

68. *See supra* note 23.

69. *See, e.g.*, Beresford v. Pacific Gas & Elec. Co., 45 Cal. 2d 738, 298 P.2d 498 (1955) (power company should have foreseen that a tree might fall against high voltage lines and cause a fire); Rocca v. Tuolumne County Elec. Power & Light Co., 76 Cal. App. 569, 245 P. 468 (1926) (defendant held liable for death of a person who

act can reasonably be anticipated by one of ordinary prudence, the act is foreseeable.[70] Therefore, if it can reasonably be anticipated that a criminal will intrude upon the premises, the criminal act is foreseeable. A prior criminal act is not necessary for a prudent person to foresee the likelihood of a future intrusion.

Reasonableness

If a particular criminal act is considered foreseeable, that is, reasonably anticipated under the circumstances, the focus should shift to whether the landowner has taken *reasonable measures* to provide security for the protection of his tenants. As stated in *Weirum*, liability would be imposed if the risk of harm resulting from the act is unreasonable—"*if the gravity and likelihood of the danger outweigh the utility of the conduct involved.*"[71] In the landlord-tenant situation, the gravity and likelihood of the crime must be weighed against the costs of prevention of harm to determine whether reasonable measures have been taken.

The degree of control over the property that the landlord retains may be an important factor in determining whether a landlord has been reasonable in his management.[72] A tenant in a single-family dwelling or a duplex may have greater control over his own protection than does his counterpart in a six-hundred unit apartment complex. For example, the house dweller may choose to acquire a guard dog for protection. Therefore the landlord could do less. By contrast, the apartment dweller should be able to rely on, for example, a landowner-provided security guard. In an apartment complex, the landlord has great, if not exclusive, control over the premises. When the task of maintaining minimum security conditions involves the common areas of the complex, the installation of such devices is out of the hands of the tenant altogether.

In all cases, however, some minimum security standards should be set for all leased premises, such as adequate locks on all doors and windows.[73] The minimum standards might vary with the

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came in contact with some loose electric wires after a limb fell on them, even though no tree limb had previously broken).

70. *See, e.g.*, Richardson v. Ham, 44 Cal. 2d 772, 285 P.2d 269 (1955); Mosley v. Arden Farms Co., 26 Cal. 2d 213, 157 P.2d 372 (1945).

71. 15 Cal. 3d at 47, 539 P.2d at 40, 123 Cal. Rptr. at 472 (emphasis added).

72. *See, e.g.*, Uccello v. Laudenslayer, 44 Cal. App. 3d 504, 118 Cal. Rptr. 741 (1975) (if landlord retains certain degree of control over dangerous condition when possession is given over to tenant, the landlord has a duty to use reasonable care to eliminate condition); *see also* Comment, *California's Approach to Third Party Liability for Criminal Violence*, 13 LOY. L.A.L. REV. 535 (1980).

73. *See, e.g.*, N.Y. MULT. DWELL. LAW § 50-a (McKinney 1974 & Supp. 1978). New York's law sets forth minimum requirements for locks, windows, and doors

type of leased dwelling, with multi-unit apartments having greater minimum standards than single-family homes. In addition to adequate locks, multi-unit apartments might need to be equipped with private security guards, security gates or buzzing systems as part of the minimum security requirement.

California presently has no statewide security requirements for residential dwellings.[74] The imposition of a statutory duty on landlords to meet certain security standards would be similar to other types of consumer-protection legislation in housing.[75] California law already requires that certain health and safety requirements in housing be met.[76] These include such necessities as adequate water supplies, adequate plumbing facilities, and sanitary conditions. Security is another necessity that would be an appropriate area for legislative intervention.

The passage of legislation relating to security requirements in leased dwellings would be beneficial to both the landlord and the tenant. Landlords would have notice of their duty to take reasonable measures to deter criminal acts.[77] This notice would give them peace of mind that the steps they have taken in providing security measures would probably be considered reasonable. Tenants, in turn, would be able to rely on their expectations that the landlord has taken reasonable protective measures. Their

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for multiple dwellings. A multiple dwelling is defined in the statute as one rented out to three or more families.

74. A number of cities have adopted at least part of the California Model Building Ordinance developed by the California Crime Prevention Association in 1978. *See, e.g.*, SANTA ANA, CAL., CODE §§ 8-200 to 213. This model ordinance establishes minimum standards for locks, doors, and windows. However, it applies only to new buildings, not existing structures. *See* California Crime Prevention Association, California Model Building Security Ordinance 1 (Jan. 1978). Ironically, it may very well be the older buildings located in the urban centers that have the greatest need for minimum security requirements.

75. *See, e.g.*, CAL. CIV. CODE § 1941.1-1942.5 (West 1954 & Supp. 1982) (untenantable dwellings defined and statutory remedies created).

76. Minimum security requirements might be considered part of an implied warranty of habitability. *See, e.g.*, Secretary of Housing and Urban Development v. Leyfield, 88 Cal. App. 3d Supp. 28, 152 Cal. Rptr. 342 (1978). *See generally* Hudson, *Expanding the Scope of the Implied Warranty of Habitability: A Landlord's Duty to Protect Tenants from Foreseeable Criminal Activity*, 33 VAND. L. REV. 1493 (1980); Comment, *Security: A New Standard for Habitability*, 42 U. PITT. L. REV. 415 (1981); Comment, *Trentacost v. Brussel: An Extension of the Landlord's Implied Warranty of Habitability*, 33 RUTGERS L. REV. 1157 (1981).

77. *See generally* Henszey & Weisman, *What is the Landlord's Responsibility for Criminal Acts on the Premises?* 6 REAL EST. L.J. 104 (1977) for a discussion on the need for legislation to define the scope of the landlord's duty to provide some security measures for the tenant.

fear of criminal intrusion would be reduced.[78]

Deviation from legislation mandating minimum security requirements could constitute negligence per se.[79] This would be no different than other areas of the law where deviation from a statute creates a presumption of negligence.[80]

In the absence of legislation, the reasonableness of a landlord's conduct in providing security devices could be determined by the courts by comparing his actions to the conduct of other landlords in the community. Evidence of the custom of others similarly situated is admissible on the issues of due care and negligence.[81] Departure from the custom of landlords in the community may support a charge of negligence.[82]

A problem with using the custom of others similarly situated as an indication of reasonableness arises, however, when all landlords in a certain area fail to provide any security measures. The custom of landlords similarly situated would be to provide no protection. But adherence to custom does not automatically mean the landlord has been reasonable.[83] In these situations, reasonableness would have to be determined by other criteria. Therefore, legislation requiring minimal security devices would be preferable to a dependence on custom as a measure of reasonableness.

SUMMARY

Some California appellate court cases have found landlords liable for failure to provide adequate security measures. These cases have failed to provide the analytical basis for this result. An imposition of a landlord's duty to provide adequate security measures can be justified by the application of two overlapping duty rules: 1. the landlord's duty to use reasonable care in the

78. *See supra* note 24.

79. *See, e.g.*, Walters v. Sloan, 20 Cal. 3d 199, 571 P.2d 609, 142 Cal. Rptr. 152 (1977); Diamond v. Grow, 243 Cal. App. 2d 396, 52 Cal. Rptr. 265 (1966).

80. *See, e.g.*, McNally v. Ward, 192 Cal. App. 2d 871, 14 Cal. Rptr. 260 (1961).

81. *See, e.g.*, Fowler v. Key System Transit Lines, 37 Cal. 2d 65, 230 P.2d 339 (1951); Perumean v. Wills, 8 Cal. 2d 578, 67 P.2d 96 (1937).

82. For example, it may be customary that in all large apartment complexes a security guard is on duty. If one large complex fails to maintain a security guard or some comparable security measure, this deviation may be evidence of negligence.

83. "Failure to observe custom may be evidence of negligence, but the standard is not fixed by custom. The standard is always due care. The presence or absence of custom does not alter that standard. Custom may assist in the determination of what constitutes due care. What others do is some evidence of what should be done, but custom is never a substitute for due care." Owen v. Rheem Mfg. Co., 83 Cal. App. 2d 42, 45, 187 P.2d 785, 786 (1947) (citations omitted). *See also* Polk v. City of Los Angeles, 26 Cal. 2d 519, 159 P.2d 931 (1945); Wolfsen v. Wheeler, 130 Cal. App. 475, 19 P.2d 1004 (1933).

management of his property, and 2. a landlord's duty to protect against criminal intrusions based on the special relationship between landlord and tenant.

The determination of whether a landlord has breached his duty of care must be based on the considerations of foreseeability and reasonableness. Foreseeability does not require a prior criminal act on the premises. Legislation is needed to establish minimum security requirements.

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